

**REPORT  
OF THE  
COMPLIANCE ADVISORY PANEL**



**Indiana Legislative Services Agency  
200 W. Washington St., Suite 301  
Indianapolis, Indiana 46204-2789**

**November, 1998**

# **Compliance Advisory Panel**

## **Membership Roster**

### **Senators**

J. Murray Clark, Chair  
Indianapolis

Lindel Hume  
Princeton

### **Representatives**

Cleo Duncan  
Greensburg

Dale Sturtz  
LaGrange

### **Lay Member**

Erika Seydel  
Indiana Department of  
Environmental Management

### **Legislative Services Agency Staff**

Kristin Breen, Fiscal Analyst  
Tim Tyler, Staff Attorney

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Commission can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

## **I. STATUTORY DIRECTIVE**

The Indiana General Assembly enacted P.L. 170 - 1995, which established the Compliance Advisory Panel (CAP) to carry out the duties established under Section 507 of the federal Clean Air Act (42 U.S.C. 7661f).

## **II. INTRODUCTION AND REASONS FOR STUDY**

Section 507 of the federal Clean Air Act (42 U.S.C. 7661f) requires each state to plan for the establishment of a small business stationary source technical and environmental compliance assistance program. It also requires each state to create a Compliance Advisory Panel. The Panel must do the following:

- render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;
- make periodic reports to the Environmental Protection Agency Administrator concerning the compliance of the state small business stationary source technical and environmental compliance assistance program;
- review information for small business stationary sources to assure such information is understandable by the lay person; and
- have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

## **III. SUMMARY OF WORK PROGRAM**

The Panel held three meetings at the State House during the 1998 interim.

(1) At the first meeting on September 15, the CAP heard testimony on recent Indiana Department of Environmental Management (IDEM) activities.

(2) At the second meeting on October 13, the CAP discussed confined feeding and Indiana's audit privilege statute.

(3) At the third meeting on November 10, the CAP approved the final report.

## **IV. SUMMARY OF TESTIMONY**

### **SEPTEMBER 15, 1998 MEETING:**

***IDEM Activities.*** IDEM staff provided information on the following agency activities:

*Governor's Toxic Reduction Challenge.* Companies pledge to reduce releases of certain toxic chemicals into the air and water by the year 2002.

*Multi-Media Compliance Pilot Project.* This pilot project brings together compliance, technical assistance, and pollution prevention personnel to achieve the greatest environmental benefit. It involves the metal finishing, wood furniture, foundry, electric utility, and pharmaceutical industries.

*Pollution Complaint Clearinghouse.* The clearinghouse began operating on October 1, 1998.

*Confidentiality Procedures.* IDEM's Compliance and Technical Assistance Program (CTAP) confidentiality procedures were discussed.

The issue of providing amnesty to businesses involved in CTAP that are in violation of a law or regulation was raised.

It was suggested that there needs to be a mechanism to coordinate activities of CTAP staff and IDEM inspectors. This, however, would require a waiver of confidentiality by businesses.

*Indiana Environmental Extension Network.* This Network was established to create links among all statewide environmental assistance providers. Among those involved are the Indiana Business Modernization and Technology Corporation, the Clean Manufacturing Technology and Safe Materials Institute, the Indiana Economic Development Council, and IDEM.

*Protecting Children from Environmental Threats Initiative.* This initiative is part of Governor O'Bannon's "Building Bright Beginnings" campaign, a multi-agency campaign focusing on the health and safety of children younger than six years of age. The "Simple Steps" campaign provides guidance on how to protect children from environmental threats, such as lead and mercury. IDEM is recruiting AmeriCorps members to help with this initiative.

*Compliance and Technical Assistance Program (CTAP) Activities.* IDEM staff provided a summary of CTAP activities since the last CAP meeting in November 1997.

**Other Business.** Rep. Duncan mentioned that a company got approval for rezoning for an asphalt plant under false pretenses. The company is now applying for an air permit from IDEM.

#### **OCTOBER 13, 1998 MEETING:**

**Confined Feeding.** Preliminary adoption of confined feeding rules is possible by February 1999 with final adoption hoped for by early summer. IDEM is creating a guidance document to go along with the rules.

The Environmental Protection Agency (EPA) and the U.S. Department of Agriculture are leaning toward requiring National Pollutant Discharge Elimination System (NPDES) permits for confined feeding facilities. IDEM wants the federal government to defer to states' programs.

**Indiana's Audit Privilege Statute.** The EPA has threatened to withdraw the delegation of authority for environmental programs if the EPA's concerns, including information gathering authorities, information needed for injunctive relief, public access to information, and citizen challenge to assertion of privilege are not addressed. These issues will be resolved with an Opinion Letter from the Indiana Attorney General's (AG) Office.

In addition, the EPA would like the audit privilege statute to be modified to eliminate the application of the privilege to criminal investigations and proceedings. Also, the EPA would like the issue of public access to information to be clarified. IDEM is working with the AG's Office to resolve this issue. IDEM will make a proposal to the General Assembly this session regarding modifications to the audit privilege statute. It is difficult to market the audit privilege before the differences between the state and the EPA are resolved.

The EPA will reduce a company's fine if it voluntarily discloses a violation. It is current EPA policy that if an economic advantage resulted from the violation, the company must pay that amount. The EPA is looking at extending its policy of waiving fines to include companies that transfer ownership. Dave Hensel, Assistant Commissioner of IDEM's Office of Legal Counsel commented that he would like IDEM to have a

similar policy where all or part of a penalty would be waived if a company voluntarily discloses a violation.

IDEM encourages businesses to implement the ISO-14000, an international standard for developing and implementing environmental management systems.

***Other Business.*** Rep. Duncan noted that a few years ago, IDEM made an effort to promote voluntary compliance. She would like to see the promotion continued and expanded.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Panel did not make any findings of fact or recommendations.

The final report of the Panel was adopted by unanimous voice vote.

## WITNESS LIST

Debra Dubenetzky, Coordinator, Multimedia Compliance Pilot Project, Indiana Department of Environmental Management (IDEM)

Vince Griffin, Director of Environmental and Energy Policy, Indiana Chamber of Commerce

Bill Hayden, Sierra Club, Izaak Walton League, and Save the Dunes Council

Dave Hensel, Assistant Commissioner, Office of Legal Counsel, IDEM

Tom Neltner, Assistant Commissioner, Office of Pollution Prevention and Technical Assistance, IDEM

Pam O'Rourke, Pollution Complaint Clearinghouse Coordinator, IDEM

Bruce Palin, Assistant Commissioner, Solid and Hazardous Waste Management, IDEM

Paula Smith, Branch Chief, Office of Voluntary Compliance, IDEM